



The Crimes (Capital Offences) Bill

Speeches by

Mr Norman Lacy MP, Member for Ringwood

19th and 26th March 1975

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Mr. LACY (Ringwood): I support the Bill for the abolition of capital punishment, and urge the House to reject the amendment moved by the Leader of the Country Party. I cannot do so in such charitable terms as the Premier did. One could believe that the amendment was genuine if over past years one had heard the Leader of the Country Party through the councils and conferences of his party, and the opportunities he has had in this House, advance this type of argument in terms of a proposal or a plank of a platform, or whatever. But we have not heard that. Indeed, the amendment is brought forward only to divert the attention of the Parliament from the true purpose of the Bill.

Tonight there has been reference by the honorable member for Rodney to compassion or concern for the victim, and by the honorable members for Geelong and Ivanhoe by interjection to justice. Indeed, all those words relate to one view of the purpose of capital punishment - the retributive view - the argument of vengeance; that those closest to the victim, and the community generally, ought to be given the opportunity of seeing the State, on their behalf, take vengeance upon the murderer.

I enter the debate with some concern to present a point of view which in some ways I hesitate to present because, since becoming a member of this House, I have studiously avoided references to scripture and Christian theology and those matters which I sometimes suspect members of the Opposition would like me to refer to in order to fulfil their interjections.

On this occasion, I hope I might have a dispensation and take the opportunity of advancing what I would like to call "a Christian view on punishment". I say "a Christian view" because I recognize that there may well be other Christian views on punishment. In presenting my argument, I do not challenge the faith of other honorable members or suggest that they are any less Christian for holding the views that they do. I want to take the opportunity of presenting one interpretation, what I believe to be a valid interpretation, of the scriptural passages that are often quoted and have been quoted by Mr. McEwan, who always comes out when this issue is raised, in the *Herald* of 15th March at page 14. Mr. McEwan's whole idea of justice and law, and compassion for the victim goes right back to the Mosaic law, the presentation of the law in the book of *Exodus* where we have the passage, "*an eye for an eye and a tooth for a tooth and a life for a life.*" The difficulty with this retributive argument is that it is hardly ever advanced but is only referred to. It is referred to with such comments as "*a need for justice*", and the advancing of concepts such as the need for more compassion to be shown to the victim.

It would appear that those who want to argue this case are afraid to present the full weight of their argument for vengeance and have edged around the point. They do not bring it out into the open but merely suggest by inference that we must encourage vengeance on the murderer. This is not surprising because in a society which still retains many of the influences of Judaism and Christianity, this sort of concept is hard to wear. It is hard for this argument to be advanced in its full-blown form because it is one that retentionists seem to be ashamed of.

It is not surprising, for the whole thrust of contemporary Judaism and Christianity in regard to crime and punishment is one of compassion for and forgiveness of the offender as a basis of what I suggest is the proper objective of punishment, that of reclamation. So far as Christians are concerned, this thrust or feeling of compassion or forgiveness is based on the teachings of Christ as noted in *Matthew* chapter 18:21 where Peter comes to Jesus and says, "*Lord, how often shall my brother sin against me and I forgive him? As many as seven times?*" Jesus answers, "*I do not say unto you seven times, but seventy times seven.*" He then told a parable to illustrate his point that those who have been forgiven must also forgive or face the consequences of not being forgiven themselves.

With the approach of Easter, the next example might be appropriate. The execution of Christ is itself a most powerful illustration of the attitude he sought to teach those who followed him. His utterance of the words, "*Father, forgive them for they know not what they do*" while suffering the tortures of crucifixion indicates the attitude which he would have implanted in those who follow him.

I advance this argument because I believe there are members in the House who have not made up their minds. Most honorable members have done so but there are some who have not and these members may want to know and may want to think about this sort of view.

It is not surprising that Christian retentionists do not readily advance the retributive argument because one could hardly worship the God of the *Bible* whose recorded words are "*vengeance is mine, I will repay*", and at the same time encourage the retention of capital punishment on the assumption that those close to the victim would want revenge. This was not found to be the case, as the honorable member for Melbourne mentioned in the example that I was going to quote at this point. It has not been the case, for example, in the *Tait* murder or in many others. Those who are closest to the victim have not wanted revenge, have not wanted to have the punishment of the murderer based on an objective of retribution.

I want to analyse the very basis of the retributive argument. The text from *Exodus* is constantly quoted as though, once mentioned, it is self evident that the death penalty must be retained. That is the passage, "*an eye for an eye and a tooth for a tooth and a life for a life*". When the phrase is quoted, it is not surprisingly never related to its context.

In the context of the passage, it is a statement about what penalty should apply for a particular crime. The crime referred to is that which occurs in a situation where two men are having a wrestling match and accidentally a pregnant woman standing nearby is injured so as to bring on a miscarriage. Under the Israelite or Mosaic law, in that situation, and in that situation alone, if the woman lives, the man who caused the miscarriage shall be fined at a rate determined by the judge. But if the woman dies, then the man responsible for the accident shall give a "*life for a life*".

There are two points to be made here in answer to those who want to interpret this passage literally and apply that interpretation to this debate. Firstly, the consequence of that application would be to say that every person who kills another accidentally shall be killed. Secondly, the passage does not say whose life ought to be given in place of the life lost. Is it the life of the man responsible or is it his wife's life? That is not as stupid as one might think when one looks at the context in which this passage is found. If one reads the rest of the chapter, it becomes a logical proposition.

In this ancient culture the lives of women, slaves and children were not regarded as of equivalent value to the lives of men. The concept advanced by the retentionists is that the effect of the punishment must be equivalent to the effect of the crime. If it is to be "*a life for a life*", then the equivalent life is that of the murderer's wife. This would be acceptable under the Old Testament concept of blood vengeance.

The second point of any analysis of "*an eye for an eye and a tooth for a tooth*" is that the whole culture of the ancient Israelites must be kept in mind, for in the same presentation of the Mosaic law the Israelites are admonished to do the following things - take an awl and with it bore a hole through a loyal servant's ear as a symbol of his perpetual servitude. Later in the same chapter the Israelites are admonished not to demand an equivalent punishment of "*an eye for an eye*" if the victim is a slave. In that case "*an eye for an eye*" does not count and the murderer simply pays a fine.

Still later in the same passage the Israelites are admonished to offer the first-born child in the same manner as they are admonished to offer the first-born ox or sheep as a sacrifice. It is well to remember that the method of that offering was to slit the throat of the animal concerned, and this would apply in case of the first-born child, to drain its blood, to sprinkle the blood around the altar and to burn the body on the altar.

Thirdly, if the passage is taken literally, it is found to be riddled with: contradictions because, in the same passage, for a number of other crimes the punishment demanded is many times greater than one for one. For example, I quote from chapter 22 of *Exodus* –

"If a man steals an ox or a sheep and kills it or sells it he shall pay five oxen for an ox and four sheep for a sheep"

.....

“Whoever curses his father and mother shall be put to death”

.....

“Whoever sacrifices to any God save to the Lord only shall be utterly destroyed”

.....

“You shall not suffer a witch to live.”

That admonition alone has been responsible over the centuries for sending legions of innocent old ladies to their death.

Fourthly; so far as the Christian is concerned, this passage has been specifically re-interpreted by Christ in the *Sermon on the Mount*, where he says to those who would follow him -

“You have heard that it was said of old, an eye for an eye, a tooth for a tooth, but I say to you, do not resist one who is evil. But if anyone strikes you on the right cheek turn to him the other also;”

and so on. Consequently, one must conclude that in the Biblical doctrine of crime and punishment the law of retaliation has been replaced with the law of love.

Fifthly, I argue in regard to the retributive argument that it would appear that those who argue for the retention of the death penalty want it to be selectively administered. They do not demand *“an eye for an eye”* for any crime other than murder. They do not suggest, for instance, that razor slashers should be razor-slashed, that arsonists should have their houses burnt down or that rapists should be raped.

It is at least arguable whether capital punishment is an equivalent punishment for the crime of murder, because it would appear that it is somewhat more than an eye for an eye. As Dostoyevsky stated in his book *The Idiot*, referred to at page 13 of *Hanged by the Neck* by Arthur Koestler and C. M. Rolph

“But the chief, and worst pain, may not be in the bodily suffering but in one's knowing for certain that in an hour, and then in ten minutes, and then in half a minute, and then now, at the very moment, the soul will leave the body and that one will cease to be a man, and that that's bound to happen; the worst part of it is that it is certain.”

.....

“To kill for murder is a punishment incomparably worse than the crime itself! Murder by legal sentence is immeasurably more terrible than murder by brigands. Anyone murdered by brigands, whose throat is cut at night in a wood, or something of that sort, must surely hope to escape till the very last minute. There have been instances when a man has still hoped for escape, running or begging for mercy after his throat was cut. But in the other case” -

that is, the case of the murderer being killed, having his life taken by the death sentence -

“there is the sentence, and the whole torture lies in the fact that there is certainly no escape, and there is no torture in the world more terrible.”

There is underlying this debate the whole question of the purpose of punishment. Why do we punish the criminal? Is it to deter other potential criminals from committing the same crime? If it is, then for goodness sake let us hear those who believe it advance the arguments to show that it is a unique deterrent for the crime of murder. So far that has not been attempted.

Is it to give the society generally, and those close to the victim in particular, the opportunity for revenge? I have dealt with that question. Is it to reform the criminal and to return him eventually back to the society as a useful and contributing member of it? All these questions can be asked of punishment in general, but they are particularly relevant to capital punishment. Ought it to be retained on the statute-book for deterrence or for vengeance? It cannot be retained, surely, if our objective is reclamation. One cannot reclaim the hanged criminal.

A number of other objectives are sometimes advanced for punishment, namely, that it is a method of the society denouncing crimes - a boundary-maintaining mechanism, as sociologists would call it - and also that it is a means of protecting the society from its criminals, but these are self-evident objectives and seem to have little value in the debate on capital punishment.

Since executions are now carried out in private, and prisons and prisoners are constantly in the news, it is not clear which makes the greater denunciation of a crime. From evidence of the behaviour of paroled murderers it would appear that the society is equally safe from the possibility of a further violent crime, whether it hangs them or imprisons them. I would suggest, therefore, that there are only two areas for debate, and these must be debated in the House: Whether capital punishment ought to be retained, firstly, as an opportunity for retribution, or secondly, as a deterrent. These arguments have not been presented by those who wish to retain the death penalty. So far various people have indicated that they believe the death penalty ought to be retained. I do not criticize that because in the end, once the arguments have been put and the points made, it is a matter of faith and of commitment. Tonight members of this House will have the opportunity of expressing precisely which commitment they have.

I hope honorable members will not be deterred from their objectives by the amendment moved by the Leader of the Country Party. I believe and support those speakers who advanced the argument that it is now that we are debating. Let us not drag these issues out again and again. They are dragged out every time there is a murder, especially every time there is a murder with a particular circumstance which makes people feel in the way that the Minister for Youth, Sport and Recreation mentioned earlier, that the person responsible ought to be hanged. The amendment moved by the Leader of the Country Party will drag out the issues again. He asks that a committee be appointed and a report be made. The report would then be studied and brought back to Parliament and debated again. That would divert us from our true intention, and that is to judge this issue now, to make up our minds on the basis of facts, on the basis of our arguments and on the basis of our own consciences.

In conclusion I wish to congratulate the Premier for bringing forward this Bill. Also, I wish to congratulate the Leader of the Opposition for consulting others and giving his members a free vote on the matter.

26th March 1975

Mr. LACY (Ringwood): I wish to speak against the amendment of the honorable member for Lowan and in doing so I wish to speak to my colleagues on the Government side of the House -that seems to be what this debate is all about now in regard to this referendum proposal. I was not in the House last night when the amendment was moved and so I did not hear what was said.

There is an essential concept which has not been understood by some honorable members who support the Government. Honorable members are elected to this place as representatives, not as delegates. Some members on the Government side - and maybe some on the Opposition side, too - seem to think that they are delegates for those who elected them. They seem to think that the electors have delegated to them only the responsibility to voice the electors wishes on any issue and to vote only as the electors want. Surely the electors have given to their representatives in this House the responsibility to decide, to fulfil the decision that they, the electors, themselves made at the time of the last election.

We are not delegates; we are representatives. We are here to represent our electorates in this Chamber. I know my electorate does not want this Bill to pass. I also know, if honorable members will forgive, my humility, that they want me in this House. How do I resolve that conflict? The electors of Shepparton also want the Leader of the Country Party as their representative - I do not agree with them but that is their judgement. However, when the figures went up on the night of the election it was obvious to me that I had to accept the fact that my electors wanted me. I also know that they do not want this Bill to pass. How do I resolve that conflict? Do I vote according to what I know they want, or do I vote according to what I believe to be right?

What is Parliamentary democracy all about, if it is not a member coming into the House and being involved in the debate, expressing an opinion, arguing backwards and forwards, point for point, and then arriving at his own decision on the matter? That is what John Stuart Mill would tell us is the essence of Parliamentary democracy and Parliamentary democracy will vanish if that procedure is not carried out. The honorable member then has a responsibility to inform his electorate how he voted. He will make it clear at every opportunity that he will vote or has voted in a certain way, and it is up to the honorable member to make his vote known to the people whom he represents. If he does that, he will be fulfilling his role in Parliamentary democracy; it will decline if that procedure does not take place. Honorable members are here to make up their minds on the basis of arguments presented, not by some half-baked poll conducted in their electorate.

I reject the amendment for that reason. We are representatives and not delegates, and it is fallacious to suggest that because the electors in my electorate or in any other honorable member's electorate are against this proposal it ought not be passed. Let them make their decision at the next election. If the electors want to put a man or a woman in here who is going to fight for and speak and vote in favour of a Bill to bring back capital punishment, if this present Bill is passed, then they can do that at the next election. That is their opportunity. They know where each of us stands. They can look at the records and read the newspapers to find how we voted. If they really feel so strongly about it, let them do it then, at the next election.

It is conceivable in this age of technology that every home in our electorates could have a device which could record the will of the electorate. If we wished to ascertain the attitude of the electors on any issue, it could be resolved by the electors pushing a button to indicate "Yes" they are in favor of the issue or "No" they are against it. That may appear to be democratic, but is it Parliamentary democracy? It is not. The issue would then be decided by people acting on their own whim without any interest in the issue, without any information, without any debate. As the honorable member for Glen Iris said, they are not interested in it and if on their own whim they decided the issue, what happens to Parliamentary democracy? It is dead.

Is this the way Victoria and Australia are to be governed - by every issue being decided by the mood of the electorate? That is what the honorable members who propose this referendum suggest. They suggest that this is the way things ought to be decided. Who was pushing for a referendum on moving

trotting from the showgrounds to Moonee Valley? Was the Government given a mandate to do that at the last election? It was not mentioned.

Mr. ROSS-EDWARDS: That has not yet been done.

Mr. LACY: But it has been decided. I give the Leader of the Country Party full marks for honesty. He has stated that he is interested only in ensuring that the capital punishment law stays on the statute-book. He does not care by what devious means that is achieved. The attempt to withdraw his motion yesterday indicates how lacking in genuineness on this issue the honorable member is.

Not only has he -

The SPEAKER (the Hon. K. H. Wheeler): Order! The honorable member should not launch on a tirade of criticism of other honorable members; he should keep to the amendment before the House.

Mr. LACY: I urge the House, especially my party colleagues, to reject this amendment. In his speech the honorable member for Glen Iris admitted that there is no interest in the electorate on the matter. How fallacious it is to suggest that people who have no interest in the matter should be those who decide it when honorable members in this House have spent four days debating the subject, have the parliamentary Library at their disposal, and have heard some magnificent speeches on both sides of the issue. At this last minute a stand is being taken that the House should not make the decision, and that the issue should be referred to the people. It has been admitted by the Leader of the Country Party that this last-ditch stand is being made by those who wish to retain capital punishment on the statute-book at all costs. I urge my colleagues to consider seriously these things. The retentionists agree that the people are not interested in the issue; we have had four days of debate and the arguments have been heard; and the case has been well put. Only those who fear that the Bill may pass are now proposing a referendum.